



Signed: September 01, 2006

*Leslie Tchaikovsky*

LESLIE TCHAIKOVSKY  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re

No. 02-45201 TK  
Chapter 7

FERNANDO CAMPOS,

Debtor.

FERNANDO CAMPOS,

A.P. No. 05-4412 AT

Plaintiff,

vs.

MICHAEL HEATH,  
J. LOUIS DELLI GATTI,,  
JUDITH DELLI GATTI, et al.,

Defendants.

**MEMORANDUM OF DECISION RE MOTION FOR SUMMARY JUDGMENT**

Plaintiff Fernando Campos (the "Debtor"), having previously settled with defendant Michael Heath ("Heath"), seeks an award of compensatory and punitive damages against defendants J. Louis and Judith Delli Gatti (the "Delli Gattis") for violation of the discharge injunction. See 11 U.S.C. § 524. For the reasons stated below, the Court will award the Debtor \$10,465.75 in compensatory

1 damages, less a credit of \$1,500 for the settlement payments received  
2 to date from Heath, and \$5,000 in punitive damages. In addition, the  
3 Court will direct the Debtor to file a partial satisfaction of  
4 judgment in this adversary proceeding promptly after receipt of any  
5 additional payments from Heath.

#### 6 **SUMMARY OF FACTS**

7 This bankruptcy case was filed as a voluntary chapter 11 case on  
8 September 27, 2002 and was converted to chapter 7 on April 17, 2003.  
9 The Debtor received his discharge on December 12, 2003. The Delli  
10 Gattis filed a proof of claim in the bankruptcy case.<sup>1</sup> In 2004, as  
11 the Court has previously found, Mr. Delli Gatti attempted to exercise  
12 control over property of the estate. The Debtor filed a motion for  
13 compensatory and punitive damages for violation of the automatic stay  
14 pursuant to 11 U.S.C. § 362(h). The Court awarded the Debtor  
15 compensatory damages of \$1,622.50. However, due to the modest amount  
16 of the award and the fact that the Debtor's conduct had not been  
17 blameless, the Court declined to award punitive damages.

18 After the Debtor received his discharge, the Delli Gattis filed  
19 an action against the Debtor in state court based on their discharged  
20 claim. Heath represented them in this action. Heath had not  
21 represented the Delli Gattis in the bankruptcy case. On September  
22 16, 2005, the Debtor filed this adversary proceeding, seeking damages  
23 for violation of the discharge injunction. The Delli Gattis conceded  
24 that their initial complaint had violated the discharge injunction.

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26 <sup>1</sup>The claim, which asserted both priority and secured status,  
was ultimately disallowed.

1 However, they contended that they had subsequently amended their  
2 complaint and that the amended complaint did not do so. At a hearing  
3 on September 21, 2005, the Court ruled to the contrary and ordered  
4 the Delli Gattis to dismiss the state court action and to expunge the  
5 lis pendens that had been recorded based on that action.

6 The Debtor's request for damages was set for trial. The trial  
7 was initially scheduled to take place on March 24, 2006. At the  
8 Delli Gattis' request, the trial was delayed and was rescheduled for  
9 July 21, 2006. The Debtor filed a trial brief on July 24, 2006. On  
10 the same day, the Delli Gattis filed a motion to postpone the trial  
11 a second time. The motion was denied. However, at the time of  
12 trial, it appeared that neither party had exchanged documents one  
13 week before the trial date as directed by the Court's scheduling  
14 order. Both parties asked that the other party's documents be  
15 excluded but asked that their own documents be admitted.

16 The Court concluded that, under the circumstances, neither side  
17 should be able to introduce any documents and the trial should be  
18 continued. However, the Court inquired why a trial was necessary.  
19 Since the only issue was the amount of the damages and the damages  
20 consisted of attorneys' fees, the Court speculated that a motion for  
21 summary judgment would be the proper way to proceed. As a result, no  
22 new trial date was scheduled. On August 1, the Debtor filed a motion  
23 for summary judgment. The Delli Gattis filed an opposition. The  
24 Debtor filed a reply. The parties appeared at a hearing on the  
25 motion, and at the conclusion of the hearing the Court took the  
26 motion under submission.

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## DISCUSSION

In the motion for summary judgment, the Debtor sought compensatory damages totaling \$15,089.72 and punitive damages totaling \$30,179.44. The \$15,089.72 represented \$13,514.75 in fees and \$597.47 in costs actually incurred plus an additional \$997.50 in estimated fees and costs to be incurred. The motion was supported by a declaration describing in detail the work performed, time spent, and rates charged.

The motion disclosed that the Debtor had settled with Heath and indeed contained a time entry relating to that settlement. However, it did not disclose the amount of the settlement or whether payment had been received. The Debtor urged the Court to award punitive damages as well as compensatory damages. He suggested that the Court's failure to do so when Mr. Delli Gatti violated the automatic stay may have contributed to this further violation of the Bankruptcy Code.

The Delli Gattis objected to the request for damages, both compensatory and punitive. They contended that the amount requested for attorneys' fees was excessive. They argued that, because the Debtor had failed to comply with the Court's scheduling order, no fees after that date should be awarded. They also contended that, at a minimum, the Court was required to reduce the amount of the award by the amount of the Debtor's settlement with Heath. Moreover, they contended that, since Heath was an attorney and the Delli Gattis were not, Heath should be held solely liable for the violation.

1           At the hearing, the Debtor disclosed that the amount of the  
2 settlement with Heath was \$6,500, of which he had received to date  
3 only \$1,500. The Debtor conceded that he was only entitled to a  
4 single recovery and suggested that the Court's order indicate a  
5 credit against the judgment amount for the \$1,500 in settlement  
6 payments received to date and direct the Debtor to file a partial  
7 satisfaction of judgment with respect to future payments.

8           The Court has considered the evidence and argument submitted by  
9 the parties and concludes as follows:

10           **Compensatory Damages:**

11           The Court will award the Debtor compensatory damages totaling  
12 \$10,465.75 in fees and \$597.47 in costs for a total of \$11,063.22.  
13 Although the Court believes that the Debtor could have proceeded by  
14 summary judgment in the first instance, if he had complied with the  
15 scheduling order, he could also have proceeded by trial. To do so,  
16 the Court estimates would have taken no more than one hour.

17           The Court finds the work performed through the day of the trial  
18 and the fees charged for that work reasonable. However, the work  
19 performed thereafter was unnecessary. Thus, the Court has deducted  
20 the fees requested for work performed thereafter, added one hour's  
21 worth of time for the trial that could have taken place had the  
22 Debtor complied with the Court's scheduling order, and then added two  
23 more hours for finalizing matters in the adversary proceeding.

24           With respect to the settlement, the Court will adopt the  
25 Debtor's suggestion. The award will be for the full amount of  
26 \$10,465.75 less a credit of \$1,500 for a net amount of \$8,965.75.

1 The Debtor will be directed to file in this proceeding a partial  
2 satisfaction of judgment promptly each time a payment is received  
3 from Heath, indicating the amount of the payment received. The  
4 judgment against the Delli Gattis will be deemed reduced by the  
5 amount of the payment.

6 **Punitive Damages:**

7 The Court will award the Debtor punitive damages of \$5,000. The  
8 Court does so despite its belief that the Delli Gattis' financial  
9 circumstances are modest. The Court is persuaded that, absent such  
10 an award, the deterrence purpose will not be served and further  
11 violations of the Bankruptcy Code may occur. Normally, the fact that  
12 the Delli Gattis were represented by counsel would have caused the  
13 Court to place a greater share of the blame on the attorney  
14 representing them. However, the Court has had considerable  
15 opportunity to observe the Delli Gattis' conduct in this case. The  
16 Court is persuaded that they knew or should have known that they were  
17 acting improperly in continuing to prosecute a claim either against  
18 the Debtor or with respect to the real property in question.

19 Counsel for the Debtor is directed to submit a proposed form of  
20 order and judgment in accordance with this decision.

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